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September 10, 2003

Chief Justice Maura Corrigan
Michigan Supreme Court
Cadillac Place, 3034 W. Grant Blvd.
Suite 8-500
Detroit, MI 48202-6034

RE: ADM 2001-51; Proposed Amendment to MRE 404

Dear Chief Justice Corrigan,

I am writing to inform you that the Prosecuting Attorneys Association of Michigan (PAAM) supports the proposed amendment to MRE 404. Our preference would be the adoption of Option 1, but we support the adoption of either proposal.

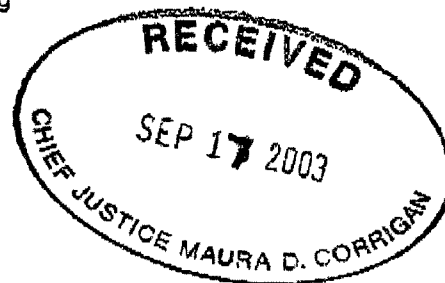
Prior acts of domestic violence should be admissible in a trial of a domestic violence offense. Until stopped, usually by law enforcement intervention, domestic violence is a continuing, often escalating offense. Rarely is the offense reported to law enforcement the first time the victim was assaulted. Introducing evidence of the prior acts allows the jury to have the complete picture of the dynamics of violence between the parties. It brings the batterer to justice, and helps end the cycle of violence present in that relationship.

Representatives of PAAM participated on the Governor's Task Force on Domestic Violence chaired by Lt. Governor Posthumous in 2000-2001. PAAM urged the task force to recommend the adoption of this amendment to MRE 404. Our recommendation was based section 1109 of the California Evidence Code, and on Federal Rules of Evidence (FRE) 413 and 414. We also recommended a special hearsay rule for domestic violence cases modeled on section 1370 of the California Evidence Code, which we again encourage the Court to adopt.

California's statute is recognized as a model for the nation and the linchpin of their nationally recognized success in holding domestic violence offenders accountable for their crimes, which is the true measure of justice. The statute was upheld by the California Court of Appeals in *People v Brown*, 92 Cal Rpt. 2d 2433 (2000). Review was denied by California's Supreme Court, making the decision binding law in California. The enclosed statements from the California Courts indicate the pressing need for this change in Michigan.

FRE 413 allows the admission of prior acts in sexual assault cases. FRE 414 allows prior acts of child molestation to be admissible in child molestation cases. Its constitutionality was upheld by the 9th Circuit in *U.S. v LeMay*, No. 00-30193, 8/9/2001. The same principles apply to domestic violence cases. These rules clearly establish that there are no Constitutional issues with making this change, and that there are no valid policy reasons for not allowing a jury to consider the entire picture of domestic violence in these cases.

Finally, Michigan has recognized the appropriateness of presenting prior acts when necessary to provide the jury a complete picture. Justice Levin's opinion for the court in *People v Dermatzek*, 390 Mich 410 (1973) quoted favorably from *People v. Jenness*, 5 Mich. 305, 323 (1858):



"Where a witness has testified to a fact or transaction which, standing alone and entirely unconnected with anything which led to or brought it about, would appear in any degree unnatural or improbable in itself, without reference to the facts preceding and inducing the principal transaction, and which, if proved, would render it more natural and probable; Such previous facts are not only admissible and relevant, but they constitute a necessary part of such principal transaction--a link in the chain of testimony, without which it would be impossible for the jury properly to appreciate the testimony in reference to such principal transaction."

In domestic violence cases, particularly in cases where a victim recants or refuses to testify, *"such previous facts ... constitute a necessary part of such principal transaction--a link in the chain of testimony, without which it would be impossible for the jury properly to appreciate the testimony in reference to such principal transaction."*

In conclusion, the unique dynamics of domestic violence cases justify and require this rule.

Thank you for your consideration, and if I can provide any further information, please don't hesitate to contact me.

Sincerely,



Charles Sherman
President

cc: Michigan Prosecutors
Members of the Supreme Court
Corbin Davis, Supreme Court Clerk

enclosure

**STATEMENTS FROM THE CALIFORNIA COURT OF APPEALS ON THE
APPROPRIATENESS OF SECTION 1109.**

"Proponents argue that in domestic violence cases, as in sexual offense cases, special evidentiary rules are justified because of the distinctive issues and difficulties of proof in this area. Specifically, evidence of other acts is important in domestic violence cases because of the typically repetitive nature of domestic violence crimes, and because of the acute difficulties of proof associated with frequently uncooperative victims and third-party witnesses who are often children or neighbors who may fear retaliation from the abuser and do not wish to become involved." The California Court of Appeals in *People v. Brown*, 77 Cal App 4th 1325 at 1333; 92 Cal Rptr 2d 433 at 438-439 (2000), quoting from the legislative analysis.

"The propensity inference is particularly appropriate in the area of domestic violence because on-going violence and abuse is the norm in domestic violence cases. Not only is there a great likelihood that any one battering episode is part of a larger scheme of dominance and control, that scheme usually escalates in frequency and severity. Without the propensity inference, the escalating nature of domestic violence is likewise masked. If we fail to address the very essence of domestic violence, we will continue to see cases where perpetrators of this violence will beat their intimate partners, even kill them, and go on to beat or kill the next intimate partner. Since criminal prosecution is one of the few factors which may interrupt the escalating pattern of domestic violence, we must be willing to look at that pattern during the criminal prosecution, or we will miss the opportunity to address this problem at all." (Assem. Com. Rep. on Public Safety (June 25, 1996) pp. 3-4.) Moreover, the special nature of domestic violence cases is legislatively recognized in enactments such as the Law Enforcement Response to Domestic Violence, sections 13700 through 13731. *People v. Johnson*, 77 Cal.App 4th 410 at 419; 91 Cal Rptr 2d 596 at 602 (2000)